

1 PATTI GOLDMAN (WSB #24426), Admitted *Pro Hac Vice* HON. JEREMY FOGEL
JOSHUA OSBORNE-KLEIN (WSB #36736), Admitted *Pro Hac Vice*

2 KRISTEN L. BOYLES (CSB #158450)

Earthjustice

3 705 Second Avenue, Suite 203

Seattle, WA 98104

4 (206) 343-7340

(206) 343-1526 [FAX]

5 pgoldman@earthjustice.org

josborne-klein@earthjustice.org

6 kboyles@earthjustice.org

7 SHELLEY DAVIS (CSB #84539)

VIRGINIA RUIZ (CSB #194986)

8 Farmworker Justice

1126 – 16th Street, N.W., Suite 270

9 Washington, D.C. 20036

(202) 293-5420

10 (202) 293-5427 [FAX]

sdavis@nclr.org

11 vruiz@nclr.org

12 AARON COLANGELO (DCB #468448), Admitted *Pro Hac Vice*

Natural Resources Defense Council

13 1200 New York Avenue, N.W.

Washington, D.C. 20005

14 (202) 289-6868

(202) 289-1060 [FAX]

15 acolangelo@nrdc.org

16 *Attorneys for Plaintiffs United Farm Workers;*

Sea Mar Community Health Center; Pineros Y Campesinos Unidos

17 *Del Noroeste; Beyond Pesticides; Frente Indigena de Organizaciones*

Binacionales; Farm Labor Organizing Committee, AFL-CIO;

18 *Teamsters Local 890 and Pesticide Action Network North America*

19 MICHAEL MEUTER (CSB #161554)

JONATHAN GETTLEMAN (CSB #243560)

20 California Rural Legal Assistance, Inc.

3 Williams Road

21 Salinas, CA 93905

(831) 757-5221

22 (831) 757-6212

mmeuter@crla.org

23 jgettleman@crla.org

24 *Attorney for Plaintiffs Martha Rodriguez and Silvina Canez*

25 UFW'S RESPONSE TO DOW'S MOTION FOR LEAVE TO
26 FILE STATEMENT OF RECENT DECISION(C07-3950 JF) -

Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
(206) 343-7340

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED FARM WORKERS; SEA MAR) Civ. No. C07-3950 JF
COMMUNITY HEALTH CENTER;)
PINEROS Y CAMPESINOS UNIDOS DEL)
NOROESTE; BEYOND PESTICIDES;) UFW'S RESPONSE TO DOW'S MOTION
FRENTE INDIGENA de) FOR LEAVE TO FILE STATEMENT OF
ORGANIZACIONES BINACIONALES;) RECENT DECISION
FARM LABOR ORGANIZING)
COMMITTEE, AFL-CIO; TEAMSTERS)
LOCAL 890; PESTICIDE ACTION)
NETWORK NORTH AMERICA; MARTHA)
RODRIGUEZ; and SILVINA CANEZ,)
Plaintiffs,)
v.)
ADMINISTRATOR, U.S.)
ENVIRONMENTAL PROTECTION)
AGENCY,)
Defendant,)
and)
DOW AGROSCIENCES LLC,)
Intervenor-Defendant.)

1 Plaintiffs United Farm Workers et al. do not oppose Dow's motion for leave to file a
2 Statement of Recent Decision regarding UFW v. EPA, No C04-099RSM (W.D. Wash. May 19,
3 2008) (hereinafter "AZM") and briefly highlight two issues.

4 1. The AZM court rejected Dow's argument that section 4(m) of FIFRA, 7 U.S.C. §
5 136a-1(m), deprived the district court of subject matter jurisdiction. AZM Case, slip op. at 3;
6 UFW Dismiss Opp. at 3-7.

7 2. Plaintiffs respectfully disagree with the AZM court's conclusion that the public
8 hearing language of FIFRA § 16(b), 7 U.S.C. § 136n(b), deprived the court of jurisdiction over
9 plaintiffs' re-registration challenge. Not only does this conclusion disregard the jurisdictional
10 pattern identified in EDF v. Costle, 631 F.2d 922 (D.C. Cir. 1980) (UFW Dismiss Opp. at 8-10),
11 but, as even the AZM court recognized, the Ninth Circuit in Northwest Food Processors
12 Association v. Reilly, 886 F.2d 1075, 1078 (9th Cir. 1989), found the public hearing requirement
13 of section 16(b) was satisfied only because "the Administrator considered the ALJ's decision
14 along side 'various parties' written exceptions to the decision, objections to the settlement, and
15 responses in support of the decision and settlement.'" AZM, slip op. at 7. None of the
16 procedures that constituted a "public hearing" in Northwest Food Processors (and all of the other
17 cases that Dow cited in its moving papers) are present in this case. UFW Dismiss Opp. at 11-12.

Respectfully submitted this 22nd day of May, 2008.

/s/ Joshua Osborne-Klein

PATTI GOLDMAN (WSB #24426)
JOSHUA OSBORNE-KLEIN (WSB #36736)
KRISTEN L. BOYLES (CSB #158450)
Earthjustice
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Seattle, WA 98104
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(206) 343-1526 [FAX]
pgoldman@earthjustice.org
josborne-klein@earthjustice.org
kboyles@earthjustice.org

SHELLEY DAVIS (CSB #84539))
VIRGINIA RUIZ (CSB #194986)
Farmworker Justice
1126 – 16th Street, N.W., Suite 270
Washington, D.C. 20036
(202) 293-5420
(202) 293-5427 [FAX]
sdavis@nclr.org
vrui@nclr.org

AARON COLANGELO (DCB #468448)
Natural Resources Defense Council
1200 New York Avenue, N.W.
Washington, D.C. 20005
(202) 289-6868
(202) 289-1060 [FAX]
acolangelo@nrdc.org

*Attorneys for Plaintiffs United Farm Workers; Sea
Mar Community Health Center; Pineros Y
Campesinos Unidos Del Noroeste; Beyond
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AFL-CIO; Teamsters Local 890; and Pesticide
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1 MICHAEL MEUTER (CSB #161554)
2 JONATHAN GETTLEMAN (CSB #243560)
3 California Rural Legal Assistance, Inc.
4 3 Williams Road
5 Salinas, CA 93905
6 (831) 757-5221
7 (831) 757-6212
8 mmeuter@crla.org
9 jgettleman@crla.org

10 *Attorney for Plaintiffs Martha Rodriguez and*
11 *Silvina Canez*

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Washington. I am over 18 years of age and not a party to this action. My business address is 705 Second Avenue, Suite 203, Seattle, Washington.

On May 22, 2008, I served a true and correct copy of the following documents on the parties listed below:

1. Plaintiffs' Response to Defendant-Intervenors' Motion for Leave to File Statement of Recent Decision.

Norman L. Rave, Jr.
U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 616-7568
(20) 514-8865 [FAX]
norman.rave@usdoj.gov
Attorney for Defendant

- ☐ via facsimile
- ☐ via overnight courier
- ☐ via certified mail
- ☐ via first-class U.S. mail
- ☐ via hand delivery
- ☒ via electronic service by Clerk

David B Weinberg
Eric Andreas
David E. Markert
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
(202) 719-7049 [FAX]
dweinberg@wileyrein.com
eandreas@wileyrein.com
dmarkert@wileyrein.com
Attorneys for Defendant-Intervenor
Dow AgroSciences LLC

- ☐ via facsimile
- ☐ via overnight courier
- ☐ via certified mail
- ☐ via first-class U.S. mail
- ☐ via hand delivery
- ☒ via electronic service by Clerk

1 Laurence A. Weiss
2 Heller Ehrman LLP
3 275 Middlefield Road
4 Menlo Park, CA 94025-3506
5 (650) 324-7000
6 (650) 324-0638 [FAX]
7 Laurence.Weiss@hellerehrman.com
8 Attorneys for Defendant-Intervenor
9 Dow AgroSciences LLC

- ☐ via facsimile
☐ via overnight courier
☐ via certified mail
☐ via first-class U.S. mail
☐ via hand delivery
☒ via electronic service by Clerk

8 I, Cheryl McEvoy, declare under penalty of perjury that the foregoing is true and correct.

9 Executed on this 22nd day of May, 2008, at Seattle, Washington.

10
11 
12 Cheryl McEvoy